



January 17, 2008

SENATE BILL No. 104

DIGEST OF SB 104 (Updated January 16, 2008 1:27 pm - DI jhm)

Citations Affected: IC 14-28.

Synopsis: Reconstruction in floodway. Requires certain information be given to the department of natural resources before a person may reconstruct an abode or a residence that is located in a floodway and is substantially damaged. (Current law requires the substantial damage to be by means other than floodwater.) Requires the lowest level of the abode or residence to be at least two feet above the one hundred (100) year flood elevation. (Current law requires the elevation to be at or above the one hundred (100) year flood elevation.) Removes the state board of finance from the administration and approval procedures concerning the flood control revolving fund.

Effective: July 1, 2008.

Hershman

January 8, 2008, read first time and referred to Committee on Rules and Legislative Procedure.

January 16, 2008, amended; reassigned to Committee on Utilities and Regulatory Affairs.

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SB 104—LS 6087/DI 13+



January 17, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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SENATE BILL No. 104

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 14-28-1-24 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 24. (a) This section
3 does not apply to the reconstruction of a residence located in a
4 boundary river floodway.
5 (b) A person may not begin the reconstruction of an abode or a
6 residence that ~~(1)~~ is located in a floodway and ~~(2)~~ is substantially
7 damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1993)
8 by ~~a means other than floodwater~~, unless the person has:
9 (1) obtained a permit under this section or section 26.5 of this
10 chapter; or
11 (2) **demonstrated to the department through the submission**
12 **of material facts, plans, and specifications that the material**
13 **used to elevate the reconstructed abode or residence:**
14 (A) **does not extend beyond the original foundation of the**
15 **abode or residence; and**
16 (B) **meets the criteria set forth in subsection (d)(2) through**
17 **(d)(7).**

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(c) A person who desires to reconstruct an abode or a residence ~~described in subsection (b)~~ **that does not meet the requirements under subsection (b)(2)** must file with the director a verified written application for a permit accompanied by a nonrefundable fee of fifty dollars (\$50). An application submitted under this section must do the following:

(1) Set forth the material facts concerning the proposed reconstruction.

(2) Include the plans and specifications for the reconstruction.

(d) The director may issue a permit to an applicant under this section only if the applicant has clearly proven all of the following:

(1) The abode or residence will be reconstructed:

(A) in the area of the original foundation and in substantially the same configuration as the former abode or residence; or

(B) in a location that is, as determined by the director, safer than the location of the original foundation.

(2) The lowest floor elevation of the abode or residence as reconstructed, including the basement, will be at ~~or least two~~ **(2) feet** above the one hundred (100) year flood elevation.

(3) The abode or residence will be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(4) The abode or residence will be reconstructed with materials resistant to flood damage.

(5) The abode or residence will be reconstructed by methods and practices that minimize flood damages.

(6) The abode or residence will be reconstructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and located to prevent water from entering or accumulating within the components during conditions of flooding.

(7) The abode or residence, as reconstructed, will comply with the minimum requirements for floodplain management set forth in 44 CFR Part 60, as in effect on January 1, 1993.

(e) When granting a permit under this section, the director may establish and incorporate into the permit certain conditions and restrictions that the director considers necessary for the purposes of this chapter.

(f) A permit issued by the director under this section is void if the reconstruction authorized by the permit is not commenced within two (2) years after the permit is issued.

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(g) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

(1) IC 14-29-7 or IC 13-2-27 (before its repeal); or

(2) IC 14-30-1 or IC 36-7-6 (before its repeal);

that is affected by the permit.

(h) The person to whom a permit is issued under this section shall post and maintain the permit at the site of the reconstruction authorized by the permit.

(i) A person who knowingly:

(1) begins the reconstruction of an abode or a residence in violation of subsection (b);

(2) violates a condition or restriction of a permit issued under this section; or

(3) fails to post and maintain a permit at a reconstruction site in violation of subsection (h);

commits a Class B infraction. Each day that the person is in violation of subsection (b), the permit, or subsection (h) constitutes a separate infraction.

SECTION 2. IC 14-28-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 25. (a) A person who desires to reconstruct an abode or a residence that:

(1) is located in a floodway; and

(2) is not substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1997); ~~by a means other than floodwater;~~

is not required to obtain a permit from the department for the reconstruction of the abode or residence if the reconstruction will meet the requirements set forth in 44 CFR Part 60, as in effect on January 1, 1997.

(b) A person who knowingly reconstructs an abode or a residence described in subsection (a) in a way that does not comply with the requirements referred to in subsection (a) commits a Class B infraction.

SECTION 3. IC 14-28-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. The administrative control of the fund and the responsibility for the administration of this chapter ~~are~~ is vested jointly in the state board of finance and in the commission. The commission may do the following:

(1) ~~Subject to the approval of the state board of finance,~~ Adopt rules under IC 4-22-2 that are considered necessary by the state board of finance and the commission for the proper administration of the fund and this chapter.

(2) Subject to the approval of the budget committee, employ the personnel that are necessary for the efficient administration of this

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chapter.

SECTION 4. IC 14-28-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) The commission may ~~subject to the final approval of the state board of finance; order the auditor of state to~~ make an approved loan from the fund to a local unit. The money loaned is to be used by the local unit for the purpose of instituting, accomplishing, and administering an approved flood control program.

(b) The total amount outstanding under loans made under:

(1) this chapter; and

(2) IC 13-2-23 (before its repeal);

to one (1) local unit may not exceed three hundred thousand dollars (\$300,000).

SECTION 5. IC 14-28-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. A local unit may institute, accomplish, and administer a flood control program if the following conditions are met:

(1) The program is authorized and approved by ordinance or resolution enacted by the governing board of the local unit.

(2) The flood control program has been approved by ~~the state board of finance and~~ the commission.

SECTION 6. IC 14-28-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. The ~~state board of finance and the~~ commission shall authorize the making of a loan to a local unit under this chapter only when the following conditions exist:

(1) An application for the loan has been submitted by the local unit in a verified petition to ~~the state board of finance and the~~ commission in the manner and form that ~~the state board of finance and the commission direct.~~ **directs.** The application must state the following:

(A) The need for the flood control program and the need for money for instituting, accomplishing, and administering the program.

(B) A detailed description of the program.

(C) An engineering estimate of the cost of the proposed program acceptable to ~~the state board of finance and the~~ commission.

(D) The amount of money considered to be needed.

(E) Other information that is requested by ~~the state board of finance and~~ the commission.

(2) There is a need, as determined by ~~the state board of finance and~~ the commission, for the proposed flood control program for

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the purpose of protecting the health, safety, and general welfare of the inhabitants of the local unit.

(3) The proposed flood control program has been approved by ~~the state board of finance and~~ the commission, if before granting the approval, ~~the state board of finance and~~ the commission determine the following:

(A) That the program:

- (i) is based upon sound engineering principles;
- (ii) is in the interest of flood control; and
- (iii) will accomplish the objectives of flood control.

(B) That for flood control programs involving the reconstruction or repair of existing flood control works that:

- (i) in the judgment of ~~the state board of finance and~~ the commission, ~~constitute~~ **constitutes** an unreasonable obstruction or impediment to the proper discharge of flood flows; or
- (ii) by virtue of their nature, location, or design, are subject to frequent damage or destruction;

approval is limited to the work that is necessary to afford emergency protection against actual or threatened damage to life and property.

(4) The local unit agrees and furnishes assurance, satisfactory to ~~the state board of finance and~~ the commission, that the local unit will operate and maintain the flood control program, after completion, in a satisfactory manner.

SECTION 7. IC 14-28-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) The local unit may:

- (1) do work; and
- (2) provide labor, equipment, and materials from any source at the local unit's disposal;

for the flood control program.

(b) The ~~state board of finance and~~ the commission may do the following:

- (1) Evaluate the participation of the local unit in the accomplishment of the project.
- (2) Compute the participation as a part or all of the share of cost that the local unit is required to pay toward the total cost of the project for which the loan from the fund is obtained.

(c) Participation authorized under this section must be under the direction of the governing board.

(d) If cash amounts are included in the local unit's share of total

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cost, the amounts shall be provided in the usual and accepted manner for the financing of the affairs of the local unit.

(e) Costs of engineering and legal services to the borrower may be regarded as a part of the total cost of the project.

SECTION 8. IC 14-28-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) The ~~state board of finance and the~~ commission shall determine and ascribe to each applicant for a loan a priority rating. The rating must be based primarily on the need of the local unit for the proposed flood control program as the need is related to the needs of other applicants for loans. Except as provided in subsection (b):

(1) the local units having the highest priority rating shall be given first consideration in making loans under this chapter; and

(2) loans shall be made in descending order as shown by the priority ratings.

(b) If an emergency demands immediate relief from actual or threatened flood damage, the application made by a local unit for a loan may be considered regardless of a previous priority rating ascribed to the applicant.

SECTION 9. IC 14-28-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. If a local unit fails to make a payment to the fund or any other payment required by this chapter or under IC 13-2-23 (before its repeal) or is in any way indebted to the fund for an amount incurred or accrued, the state may recover the amount through any of the following:

(1) The state may, through the attorney general and on behalf of ~~the state board of finance and~~ the commission, file a suit in the circuit or a superior court with jurisdiction in the county in which the local unit is located to recover the amount that the local unit owes the fund.

(2) The auditor of state may, after a sixty (60) day written notice to the local unit, withhold the payment and distribution of state money that the defaulting local unit is entitled to receive under Indiana law.

(3) For a special taxing district, upon certification by the auditor of state after a sixty (60) day written notice to the special taxing district, the auditor of each county containing land within the special taxing district shall withhold collected tax money for the special taxing district and remit the withheld tax money to the auditor of state. The auditor of state shall make a payment to the fund in the name of the special taxing district. Upon elimination of the delinquency payment, the auditor of state shall certify the

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- 1 fact to the auditors of the counties involved and any additional
- 2 withheld tax money shall be released to the special taxing district.

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SENATE MOTION

Madam President: I move that Senator Long be removed as author of Senate Bill 104 and that Senator Hershman be substituted therefor.

LONG

 COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 104, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Utilities and Regulatory Affairs.

(Reference is to SB 104 as introduced.)

LONG, Chairperson

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